

# Basics of Certificate of Need (CON) October 27, 2009



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## Certificate of Need Federal Background

- The District of Columbia and New York developed CON programs in 1964 in an effort to contain rising health care costs.
- Federally mandated CON programs were established in 1974 as a national health care cost containment strategy.



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## Certificate of Need Federal Background

- The federal mandate for CON was not renewed by the U.S. Congress in 1986.
- CON regulations are structured, in principle, to improve access to quality health care services while containing costs. Health care organizations are required to demonstrate need before investing in a regulated facility, service or equipment.



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## Michigan CON Background

- Public Act 368 of 1978 mandated the Michigan Certificate of Need (CON) Program.
- The CON Reform Act of 1988 was passed to develop a clear, systematic standards development system and reduce the number of services requiring a CON.



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## CON Commission

- Members appointed by Governor
  - Three year terms
  - No more than six from either political party
  - Responsible for developing and approving CON review standards w/legislative oversight
- Public Act 619 of 2002 made several modifications.
  - Expanded the Commission from 5 to 11
  - Key stakeholders are now represented on the Commission (i.e., physicians)



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## What is Covered by the CON Program?

The following projects must obtain a CON:

- Increase in the number or relocation of licensed beds
- Acquisition of an existing health facility
- Operation of a new health facility
- Initiation, replacement, or expansion of covered clinical services



Capital expenditure projects (i.e., construction, renovation) must obtain a CON if the projects meet the following threshold:

- \$2,932,500 for clinical service areas (Jan. 1, 2009)

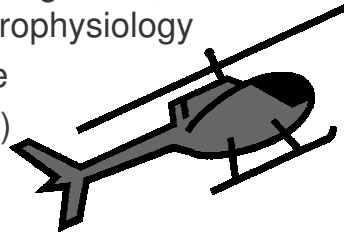


*Note:* Threshold is indexed annually by the Department based on the Consumer Price Index

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## Categories That Require CON Approval

- Air ambulances (helicopters)
- Cardiac catheterization, including diagnostic, therapeutic, angioplasty, and electrophysiology
- Hospital beds – general acute care
- Magnetic resonance imaging (MRI)
- Megavoltage radiation therapy
- Neonatal intensive care units
- Nursing home/hospital long-term care beds
- Urinary lithotripters



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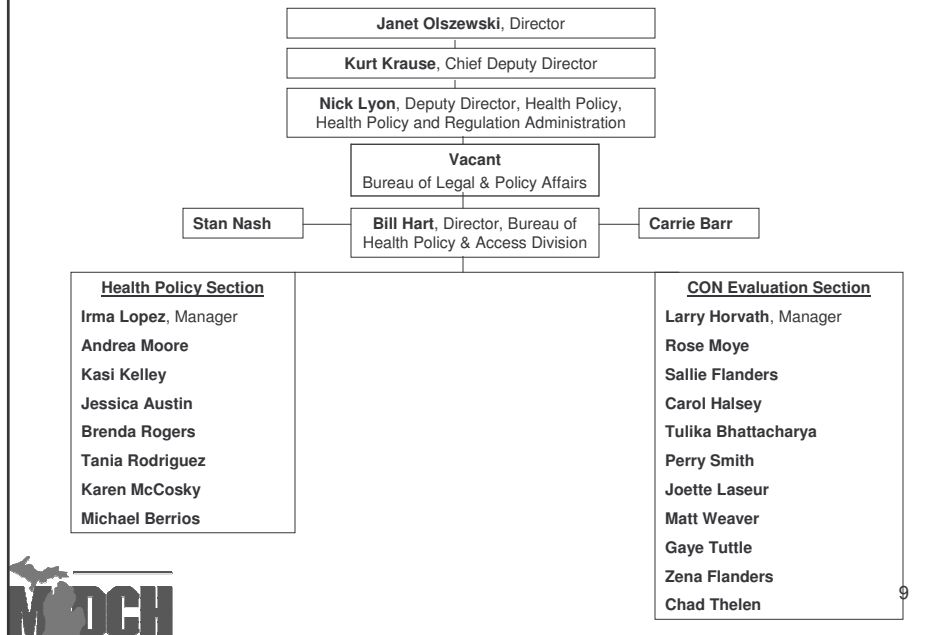
## Categories That Require CON Approval

- Open heart surgery
- Positron Emission Tomography (PET)
- Psychiatric beds – acute inpatient
- Surgical services – hospital and free-standing
- Transplantation services – bone marrow, including peripheral stem cell, heart-lung, liver, and pancreas
- Computed tomography (CT) scanners



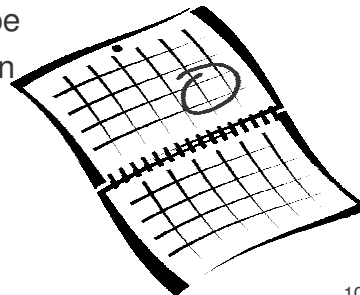
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## MDCH CON Org Chart



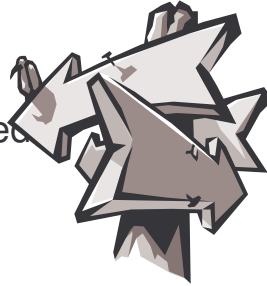
## The CON Process

1. Applicant files letter of intent
2. Applicant files completed application
3. Department reviews application
4. Applicant has 15 days to submit information to DCH
5. DCH determines the review type
6. Proposed decision issued within deadlines for each review type
  - Nonsubstantive – 45 days
  - Substantive – 120 days
  - Comparative – 150 days



## CON Process Continued...

7. Proposed decision approved
8. Proposed decision not approved
9. Hearing is not requested
10. Hearing is requested
11. DCH Director makes final decision



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## Statutory Authority for Review of Standards

- MCL 22215(1)(m) requires that standards be reviewed, and revised if necessary, every 3 years. Statute also requires that the Commission “If determined necessary by the Commission, revise, add to, or delete 1 or more of the covered clinical services listed in section 22203....” [MCL 22215(1)(a)]



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## Statutory Authority for Review of Standards Continued

- MCL 22215(1)(n) states “If a standard advisory committee is not appointed by the commission and the commission determines it necessary, submit a request to the department to engage the services of private consultants or request the department to contract with any private organization for professional and technical assistance and advice or other services to assist the commission in carrying out its duties and functions under this part.”



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## Standard Advisory Committee (SAC) Responsibility

- Public Health Code, Act 368 of 1978
  - MCL 333.22215 “...(1)(l) If the Commission determines it necessary, appoint standard advisory committees to assist in the development of proposed certificate of need review standards. A standard advisory committee shall complete its duties under this subdivision and submit its recommendations to the Commission within 6 months unless a shorter period of time is specified by the Commission when the standard advisory committee is appointed....”



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## Development of the Charge

- Public Hearing in October
- Acceptance of written comments/testimony by MDCH on behalf of the Commission
- Commission members and MDCH staff review all of the comments/testimony received
- Recommendations offered to the Commission by the MDCH
- CON Commission develops and approves the final charge to the SAC



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## SAC Operations

- Operates using modified Roberts' Rules
- Subject to Open Meeting Act; including public comment period which is placed on the agenda
- The Chair or a designee (SAC member) appointed by the Chair can run the meeting
- A physical quorum is necessary to conduct business
- Although SAC members may participate by phone; phone participation is not included in the quorum count
- A quorum is defined as a majority of the members appointed and serving
- If a quorum of the SAC members is present at any gathering, this becomes a public meeting
- Final recommendations are made by the SAC to the CON Commission. The SAC presents a written report and/or final draft language.



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## CON Commission Action

- Commission receives final report of the SAC
- Determines what proposed action will be taken based upon SAC recommendations



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## Legislative Oversight of Proposed Changes to CON Standards

- Any potential changes to existing standards are required to be reviewed by the Joint Legislative Committee (JLC)
- The JLC includes the chairs of the health policy committees from both the Senate and the House of Representatives
- After the CON Commission has take proposed action and no less than 30 days prior to the Commission taking final action, a Public Hearing is conducted by the Commission
- Notice of the proposed action, along with a brief summary of the impact of any changes, is provided and sent to the JLC for its review



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## .....Legislative Oversight Continued

- Upon the Commission taking final action, the JLC and the Governor are provided notice of the proposed final action as well as a brief summary of the impact of any changes that have been proposed by the CON Commission
- The JLC and Governor have a 45-day review period to disapprove the proposed final action. Such 45-day review period shall commence on a legislative session day and must include 9 legislative session days
- If the proposed final action is not disapproved, then it becomes effective upon the expiration of the 45-day review period or on a later date specified in the proposed final action

